

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District First Circuit, Mass.
Name (under which you were convicted): PETER V. MAGGIO III	Docket or Case No.: 22838-038 04-10231 MLW
Place of Confinement: FT. DIX, N.J.	Prisoner No.: 22838-038
<div style="display: flex; justify-content: space-between;"> UNITED STATES OF AMERICA Movant (include name under which you were convicted) </div> <div style="text-align: center; margin-top: 5px;">v. PETER V. MAGGIO III</div>	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
UNITED STATES DISTRICT COURT
JOSEPH MOAKLEY U.S. COURT HOUSE
1 COURTHOUSE WAY, BOSTON, Mass 02210
- (b) Criminal docket or case number (if you know): 04-10231 MLW
2. (a) Date of the judgment of conviction (if you know): 11-20-2006
- (b) Date of sentencing: 11-20-2006
3. Length of sentence: 98 months
4. Nature of crime (all counts): 1. conspiracy 18USC-371; 2,3,4 Wire Fraud
18USC-1343; 5,6 Mail Fraud 18USC-1341; 7 Wire Fraud 18USC-1343
8 Mail Fraud 18USC-1341; 9,10,11 Interstate Transportation
of Stolen Property 18 USC-2314
5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
Plead guilty to counts 1-11
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

GROUND ONE

Defendant's attorney failed to file the required appeal as he promised defendant he would do, and he in fact did file a notice of appeal. Defendant has been unable to communicate with the attorney, as the attorney has not responded to numerous calls from defendant.

7 AM JUR 2d Attorney At Law §60

Failure to communicate with his or her client.

An attorney must communicate with his or her client and is subject to discipline for failure to discharge this duty. An attorney must inform his or her client of relevant considerations and facts in the decision making process and of their rights and interests in the subject matter, and give clients the opportunity to make decisions; **failure to do so subjects the lawyer to disciplinary action.**

The court in Flores-Ortega made clear that "[w]hen counsel fails to file a requested appeal a defendant is entitled to a new appeal without showing that his appeal would likely have had merit". The U.S. Supreme Court decided that, when a defendant asks his attorney to file an appeal and the attorney drops the ball, **prejudice is to presumed, and the defendant is entitled to bring appeal that he was deprived of by the attorney's substandard performance.** Roe v. Flores-Ortega 528 U.S. 470 (2000)

If counsel decided defendant's conviction could not be appealed regardless of defendant's demand of doing so, counsel would have had to file an Anders brief arguing it was frivolous to do so. Anders v. California 386 U.S. 738 (1967)

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Attorney filed a timely notice of appeal but never filed the required appeal as promised the defendant/.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ENCLOSED.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: James M. Meberg

66 Long Warf, Boston, Mass 02110

(b) At arraignment and plea: Same

(c) At trial: Same

(d) At sentencing: Same

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Reinstate defendant's appellate right's due to ineffective assistance of counsel, and appoint a counsel for defendant.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 10-19-07 (month, date, year).

Executed (signed) on 10-19-07 (date).

Peter V. Maggio III
Signature of Movant Peter V. Maggio III

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

United States District Court
Joseph Moakley U.S. Court house.
1 Courthouse way.
Boston. Mass 02210

Deposits



Inmate Reg #: 22838038
Inmate Name: MAGGIO, PETER
Report Date: 10/19/2007
Report Time: 1:50:11 PM

Current Institution: Fort Dix FCI
Housing Unit: FTD-F-A
Living Quarters: F01-063L

<u>Date/Time</u>	<u>User Id</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>
10/15/2007 3:14:01 PM	AMSERVICE	Western Union	\$25.00	33301108	
10/10/2007 11:10:39 AM	AMSERVICE	Western Union	\$100.00	33300808	
10/10/2007 9:49:12 AM	FTD1026	Payroll - IPP	\$27.90	HIPP0907	
9/28/2007 2:09:42 PM	AMSERVICE	Western Union	\$175.00	33326007	
9/10/2007 8:19:57 PM	AMSERVICE	Western Union	\$150.00	33324607	
9/7/2007 4:43:22 PM	FTD1055	Payroll - IPP	\$29.70	GIPP0807	
8/27/2007 12:09:42 PM	AMSERVICE	Western Union	\$200.00	33323607	
8/12/2007 3:10:01 PM	AMSERVICE	Western Union	\$75.00	33322607	
8/10/2007 3:22:40 PM	FTD1055	Payroll - IPP	\$27.00	GIPP0707	
8/6/2007 4:15:38 PM	AMSERVICE	Western Union	\$25.00	33322107	
7/31/2007 11:09:56 AM	AMSERVICE	Western Union	\$175.00	33321707	
7/27/2007 4:18:25 PM	AMSERVICE	Western Union	\$100.00	33321507	
7/15/2007 10:09:28 PM	AMSERVICE	Western Union	\$70.00	33320607	
7/4/2007 10:05:23 AM	AMSERVICE	Western Union	\$200.00	33319807	
6/25/2007 9:04:30 AM	AMSERVICE	Western Union	\$125.00	33319107	
6/19/2007 7:14:00 PM	AMSERVICE	Western Union	\$50.00	33318707	
6/11/2007 6:16:17 PM	AMSERVICE	Western Union	\$125.00	33318107	
6/6/2007 5:30:34 AM	AMSERVICE	Lockbox - CD	\$57.81	70184501	
5/26/2007 9:03:42 AM	AMSERVICE	Western Union	\$175.00	33317007	
2/7/2007 9:16:38 PM	AMSERVICE	Western Union	\$100.00	33309307	

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Monthly average bal. = 335.40